

March 25, 2020

## Summary of Protecting Jessica Grubb's Legacy Act Included in the CARES Act Section 3221

- Initial Consent - The modified language would require affirmative, written consent from patients to opt-in before their information may be used or disclosed by a covered entity, business associate, or program subject to Part 2 for the purposes of treatment, payment, and health care operations permitted by HIPAA.
- Information may be redisclosed in accordance with the HIPAA regulation.
- Information may be shared with a public health authority as long as requirements for de-identification of protected health information are met as established under the HIPAA privacy regulation.
- Contains an education component to ensure patients understood what they were consenting to before making a final determination.
- Includes an opt-out clause to allow patients an opportunity to rescind consent if they change their minds in the future.
- Providers may access applicable State – based prescription drug monitoring programs when clinically appropriate.
- Requirement for breach notification - enforcement moves under Office for Civil Rights (OCR) in U.S. Department of Health and Human Services (HHS) and penalties for breach will be assessed in accordance with HIPAA.
- Except when authorized by a court order or patient consent, records may not be disclosed or used in any civil, criminal, administrative, or legislative

proceedings conducted by any Federal, State, or local authority with respect to the following activities:

- evidence in any criminal prosecution or civil action before a Federal or State court;
  - proceeding before a Federal, State, or local agency;
  - for a law enforcement purpose or to conduct any law enforcement investigation; and
  - any application for a warrant.
- Anti-Discrimination - Expands existing patient protections to prevent discriminatory behavior towards patients suffering from a substance use disorder in relation to:
    - access to treatment;
    - termination of employment;
    - receipt of worker's compensation;
    - rental housing; and
    - social services and benefits provided by Federal, State or local governments.
  - Rulemaking – The Secretary of Health and Human Services is to consult with appropriate legal, clinical, privacy, and civil rights experts when updating the Code of Federal Regulations to implement the provisions contained in the bill.